



4510-29-P

**DEPARTMENT OF LABOR**

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: **D-11517, JPMorgan Chase & Co. and its Current Subsidiaries, 2012-14; D-11582, South Plains Financial, Inc. Employee Stock Ownership Plan, 2012-15; D-11649, Meridian Medical Associates, S.C. Employees' Retirement Plan and Trust, 2012-16; D-11668, TIB Financial Corp. Employee Stock Ownership Plan with 401(k) Provisions, 2012-17; and D-11714, Ed Laur Defined Benefit Plan, 2012-18.**

**SUPPLEMENTARY INFORMATION:** A notice was published in the Federal Register of the pendency before the Department of a proposal to grant each such exemption. The notice set forth a summary of

facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). Each applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

Each notice of proposed exemption was issued and each exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR

Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011)<sup>1</sup> and based upon the entire record, the Department makes the following findings:

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

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<sup>1</sup> The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

JPMorgan Chase & Co. and its Current and Future Affiliates and  
Subsidiaries (JPMorgan Chase)

Located in New York, New York

[Prohibited Transaction Exemption **2012-14**

Exemption Application No. **D-11517**]

#### EXEMPTION

Section I. Sales of Auction Rate Securities from Plans to  
JPMorgan Chase: Unrelated to a Settlement  
Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in section V(e)) of an Auction Rate Security (as defined in section V(c)) to JPMorgan Chase, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in section V(f)), provided that the conditions set forth in section II have been met.<sup>2</sup>

Section II. Conditions Applicable to Transactions Described in

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<sup>2</sup> For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by JPMorgan Chase;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by JPMorgan Chase for its own employees (a JPMorgan Chase Plan), the Unrelated Sale is made pursuant to a written offer by JPMorgan Chase (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to the most recent rate information for the Auction Rate Security (if reliable information is available). Either the Offer or other materials available to the Plan provide the identity and par value of the Auction Rate Security. Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by JPMorgan Chase, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a JPMorgan Chase Plan) receives written notice regarding the Unrelated Sale, where such notice contains the material terms of the Unrelated Sale, including, but not limited to, the material terms described in the preceding sentence;

(d) The Unrelated Sale is for no consideration other than

cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;<sup>3</sup>

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in section V(d)) of JPMorgan Chase. Notwithstanding the foregoing: (1) in the case of an individual retirement account (an IRA, as described in section V(e) below) which is beneficially owned by an employee, officer, director or partner of JPMorgan Chase, or a relative of any such persons, the decision to accept the Offer or retain the

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<sup>3</sup> This exemption does not address tax issues. The Department has been informed by the Internal Revenue Service and the Department of the Treasury that they are considering providing limited relief from the requirements of sections 72(t)(4), 401(a)(9), and 4974 of the Code with respect to retirement plans that hold Auction Rate Securities. The Department has also been informed by the Internal Revenue Service that if Auction Rate Securities are purchased from a Plan in a transaction described in sections I and III at a price that exceeds the fair market value of those securities, then the excess value would be treated as a contribution for purposes of applying applicable contribution and deduction limits under sections 219, 404, 408, and 415 of the Code.

Auction Rate Security may be made by such employee, officer, director, partner, or relative; or (2) in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, the decision to accept the Offer may be made by JPMorgan Chase after JPMorgan Chase has determined that such purchase is in the best interest of the JPMorgan Chase Plan or pooled fund;<sup>4</sup>

(h) Except in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, neither JPMorgan Chase nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3-21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

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<sup>4</sup> The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to JPMorgan Chase for the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with this type of transaction following disclosure by

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) JPMorgan Chase and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (1)(1), to determine whether the conditions of this exemption have been met, except that--

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than JPMorgan Chase and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (1)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of JPMorgan Chase or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(1)(1) Except as provided below in paragraph (1)(2), and

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JPMorgan Chase of all relevant information.

notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by--

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraph (1)(1)(B)-(C) shall be authorized to examine trade secrets of JPMorgan Chase, or commercial or financial information which is privileged or confidential; and

(3) Should JPMorgan Chase refuse to disclose information on the basis that such information is exempt from disclosure, JPMorgan Chase shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the

Department may request such information.

Section III. Sales of Auction Rate Securities from Plans to JPMorgan Chase: Related to a Settlement Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to JPMorgan Chase, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery and timing of the Offer are consistent with the requirements set forth in the Settlement Agreement;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) How a Plan may determine: the Auction Rate Securities held by the Plan with JPMorgan Chase, the purchase dates for the Auction Rate Securities, and (if reliable

information is available) the most recent rate information for the Auction Rate Securities;

(2) The number of shares and par value of the Auction Rate Securities available for purchase under the Offer;

(3) The background of the Offer;

(4) That participating in the Offer will not result in or constitute a waiver of any claim of the tendering Plan;

(5) The methods and timing by which Plans may accept the Offer;

(6) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer;

(7) The timing for acceptance by JPMorgan Chase of tendered Auction Rate Securities;

(8) The timing of payment for Auction Rate Securities accepted by JPMorgan Chase for payment;

(9) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(10) The expiration date of the Offer;

(11) The fact that JPMorgan Chase may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(12) A description of the risk factors relating to the Offer as JPMorgan Chase deems appropriate;

(13) How to obtain additional information concerning the Offer; and

(14) The manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans;

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met with respect to the Settlement Sale.

#### Section V. Definitions

For purposes of this exemption:

(a) The term "affiliate" means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "control" means: The power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" means a security that:

(1) Is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) Has an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is "independent" of JPMorgan Chase if the person is:

(1) Not JPMorgan Chase or an affiliate; and

(2) Not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term "Plan" means: An individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of ERISA; or an entity holding plan assets within the meaning of 29 CFR 2510.3-101, as modified by ERISA section 3(42); and

(f) The term "Settlement Agreement" means: A legal settlement involving JPMorgan Chase and a U.S. state or federal authority that provides for the purchase of an Auction Rate Security by JPMorgan Chase from a Plan.

EFFECTIVE DATE: This exemption is effective as of February 1, 2008.

For a more complete statement of the facts and representations supporting the Department's decision to grant

this exemption, refer to the notice of proposed exemption published in the Federal Register on December 13, 2011 at 76 FR 77594.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

South Plains Financial, Inc. Employee Stock Ownership Plan  
(the Plan)

Located in Lubbock, TX

[Prohibited Transaction Exemption **2012-15**;

Exemption Application No. **D-11582**]

#### EXEMPTION

The restrictions of sections 406(a)(1)(A), (D) and (E), 406(a)(2), 406(b)(1) and (b)(2), 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, **5** by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply, (1) effective December 17, 2008, to the acquisition and holding by the Plan of certain interests (the LLC Interests) in SPFI Investment Group, LLC (the LLC), a former wholly owned subsidiary of the Plan sponsor, South Plains Financial, Inc. (SPF), which were distributed (the Distribution) as dividends to the Plan as a shareholder of SPF; and (2) the proposed redemption (the Redemption) by the LLC of the LLC Interests held by the Plan.

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**5** For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

This exemption is subject to the following conditions:

(a) The Plan's acquisition and holding of the LLC Interests occurred in connection with the Distribution, wherein the Plan acquired the LLC Interests automatically and without any action on its part.

(b) The Plan's acquisition of the LLC Interests resulted from an independent act of SPF as a corporate entity for business reasons which did not involve the Plan. As such, all shareholders of SPF, including the Plan, were treated in the same manner.

(c) The Plan paid no fees or commissions in connection with the acquisition and holding of the LLC Interests.

(d) Within ninety (90) days after the date of publication of this notice in the Federal Register, the LLC redeems the LLC Interests held by the Plan for no less than the greater of \$1,036,665 or the fair market value of the LLC Interests on the date that the Redemption occurs.

(e) The Redemption is a one-time sale of the LLC Interests for cash.

(f) The terms and conditions of the Redemption are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(g) The Plan pays no commissions, costs or other expenses in

connection with the Redemption.

(h) An independent fiduciary has approved the Redemption and monitors such transaction on behalf of the Plan.

EFFECTIVE DATE: This exemption is effective as of December 17, 2008, with respect to the acquisition and holding by the Plan of the LLC Interests. In addition, this exemption is effective as of the date of this final exemption with respect to the LLC's Redemption of the LLC Interests held by the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published in the Federal Register on March 30, 2012, at 77 FR 19345.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

Meridian Medical Associates, S.C.

Employees' Retirement Plan and Trust (the Plan)

Located in Joliet, Illinois

[Prohibited Transaction Exemption **2012-16**;

Exemption Application No. **D-11649**]

#### EXEMPTION

#### I - TRANSACTIONS

The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(D), and 4975(c)(1)(E) of the Code, will not apply to:

(a) The cash purchase (the Purchase) by the Plan (formerly, the Will County Medical Associates, S.C. Employees' Retirement Plan & Trust) of a 52 percent (52%) beneficial ownership interest in a parcel of improved real property (the Annex) located in Joliet, Illinois, from the JMG Property, LLC (the LLC), a party in interest with respect to the Plan;

(b) The entry by the Plan through a land trust (no. 6722), into a lease (the Annex Lease) with Meridian Medical Associates, S.C. (the Employer) (formerly, the Will County Medical Associates, S.C.), as lessee, of a 52 percent (52%) beneficial ownership interest in the Annex; and

(c) The personal guarantees, jointly and severally, by each of the shareholders of the Employer of the obligations of such Employer under the terms of the Annex Lease; provided that the conditions set forth, below, in Section II are satisfied.

## II - CONDITIONS

(a) With respect to the Purchase by the Plan of a 52 percent (52%) beneficial ownership interest in the Annex from the LLC:

(1) The Purchase is a one-time transaction for cash;

(2) The terms and conditions of the Purchase are no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(3) Prior to entering into the Purchase, an independent, qualified fiduciary (the I/F) determines that the

Purchase is in the interest of, and protective of the Plan and of its participants and beneficiaries;

(4) The I/F negotiates, reviews, and approves the terms of the Purchase prior to the consummation of such Purchase;

(5) The acquisition price paid by the Plan for a 52 percent (52%) beneficial ownership interest in the Annex is not more than the fair market value of such interest, as determined by an independent, qualified appraiser, as of the date of the Purchase;

(6) An independent, qualified appraiser determines, as of the date of the Purchase, the fair market value of a parcel of improved real property (the Original Facility), which is adjacent to the Annex, and in which the Plan holds a 100 percent (100%) beneficial ownership interest through a land trust (no. 2024);

(7) Immediately following the Purchase, the combined fair market value of the Plan's 52 percent (52%) beneficial ownership interest in the Annex and the fair market value of the Plan's 100 percent (100%) beneficial ownership interest in the Original Facility when added together (the Combined Facility) does not exceed 20 percent (20%) of the fair market value of the total assets of the Plan;

(8) In the event of any actual or potential divergence of interests between the Plan and the LLC, that results as a consequence of their shared ownership interest in the Annex, the I/F takes appropriate steps to resolve such conflicts of interest and in all events acts prudently and solely in the interest of the Plan with respect to all decisions pertaining to the acquisition, holding, management, and disposition of the Plan's interest in the Annex. To the extent that a conflict occurs, the I/F has, by its written agreement, the sole authority acting on behalf of the Plan to determine the resolution of any conflict that arises from the shared beneficial ownership of the Annex by the Plan and the LLC; and that such determination shall be binding on the LLC; and

(9) The Plan does not incur any fees, costs, commissions, or other charges as a result of engaging in the Purchase, other than the necessary and reasonable fees payable to the I/F and to the independent, qualified appraiser, respectively.

(b) With respect to the Annex Lease:

(1) The terms and conditions of the Annex Lease are no less favorable to the Plan than those obtainable by the Plan

under similar circumstances when negotiated at arm's length with unrelated third parties;

(2) Prior to entering into the Annex Lease, the I/F, acting on behalf of the Plan, negotiates, reviews, and approves the terms and conditions of the Annex Lease, and determines that the Annex Lease is in the interest of, and protective of the Plan and its participants and beneficiaries;

(3) The I/F monitors and enforces compliance with the conditions of this exemption and monitors and enforces compliance with all of the terms of the Annex Lease throughout the initial term of such lease and throughout the duration of each renewal of such lease, and is also responsible for legally enforcing the payment of rent and the proper performance of all other obligations of the Employer under the terms of such lease;

(4) The rent paid to the Plan by the Employer under the initial term of the Annex Lease, and the rent paid to the Plan by the Employer during each renewal of such lease, is based upon the fair market value of the Annex, as established by an independent, qualified appraiser at the time of such initial term and at the time of each renewal of such lease;

(5) The rent under the Annex Lease is adjusted at the

commencement of the second year of the term of such lease and is adjusted every second year thereafter by the I/F, based on an appraisal of the fair market value of the Annex, as established by an independent, qualified appraiser at the time of each such adjustment of rent. If twelve percent (12%) of the fair market value of the Annex, established by such appraisal at the time of any such adjustment, is greater than the then current base rent under the Annex Lease, then the base rent is revised by the I/F to reflect the increase in fair market value of the Annex, as established by such appraisal. If twelve percent (12%) of the fair market value of the Annex, established by such appraisal at the time of any such adjustment, is less than or equal to the then current base rent, then the base rent remains unchanged by the I/F;

(6) The terms of the Annex Lease shall be triple net, such that the Employer, as lessee, is responsible for paying, in addition to monthly rent, all costs for maintenance, taxes, utilities, and insurance on the Annex;

(7) Prior to entering into any renewal of the Annex Lease, the I/F, acting on behalf of the Plan, approves such renewal beyond the initial term of such lease; and

(8) The Plan does not incur any fees, any costs, any commissions, and any other charges and expenses as a result of entering into the Annex Lease, other than the necessary and reasonable fees payable to the I/F and payable to the independent, qualified appraiser, respectively.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on June 1, 2012, at 77 FR 32686.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8551. (This is not a toll-free number.)

TIB Financial Corp. Employee Stock Ownership Plan with 401(k)  
Provisions (the Plan)  
Located in Naples, Florida  
[Prohibited Transaction Exemption **2012-17**;  
Exemption Application No. **D-11668**]

EXEMPTION

The restrictions of sections 406(a)(1)(A) and (E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code,<sup>6</sup> shall not apply, effective December 17, 2010 through January 18, 2011, to: (1) the acquisition of certain stock rights (the Rights) by the Plan in connection with, and under the terms and conditions of, a Rights offering (the Offering) by TIB Financial Corp. (TIB or the Applicant), the Plan sponsor and a party in interest with respect to the Plan, and (2) the holding of the Rights by the Plan during the subscription period of the Offering; provided that the following conditions were met:

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<sup>6</sup> For purposes of this exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(a) The receipt of the Rights by the Plan occurred pursuant to Plan provisions for individually directed investments of such accounts, in connection with the Offering, and was made available by TIB on the same terms to all shareholders of record (the Shareholders) of TIB's common stock (Common Stock) as of 4:01 p.m., New York City time, on July 12, 2010 (the Record Date);

(b) The acquisition of the Rights by the Plan resulted from an independent act of TIB as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to such acquisition;

(c) All Shareholders of Common Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Common Stock held by such Shareholders;

(d) All decisions regarding the Rights held by the Plan were made by the individual Plan participants (Participants) whose accounts in the Plan received the Rights pursuant to the Offering, in accordance with the provisions under the Plan for individually-directed investment of such account; and

(e) The Plan did not pay any fees or commissions in connection with the acquisition and or holding of the Rights.

EFFECTIVE DATE: This exemption is effective from December 17, 2010, through and including January 18, 2011.

## WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption on or before May 21, 2012. During the comment period, the Department received one written comment from a Participant concerning the benefit of the Offering to the Plan and the provision of information to Participants concerning the terms of the Offering. The Participant's comment, as well as the Applicant's response to the issues raised therein, is described below. The Department received no hearing requests.

### *Participant's Comment*

The Participant's comment concerned the Participant's belief that the Offering was conducted in a manner that was not in the benefit of the Participants in the Plan, and that TIB failed to provide information to Participants regarding their rights and obligations under the terms of the Offering. In this regard, the Participant states that a third party investment counselor whom the Participant solicited for advice suggested that the Offering benefited TIB, but did not necessarily benefit the Participants in the Plan. Furthermore, the Participant

states that Participants had no choice except to deal with the terms of the Offering. Finally, the Participant states that Participants did not receive information regarding whom to contact or how to receive assistance concerning the terms of the Offering.

*Applicant's Response*

The Applicant reviewed the Participant's comment and disagreed with the Participant's characterization of the Offering and the Participant's opportunity to participate in the Offering. In response to the Participant's assertion that the Offering benefited TIB, but did not necessarily benefit the Participants in the Plan, the Applicant states that the Offering was intended as an opportunity for all shareholders of TIB Stock including those who held the TIB Stock in the Plan, to acquire additional shares of TIB Stock at a price below that available in the market at that time. In this regard, the Applicant notes that, as set forth in the proposed exemption, the subscription price was \$15 per share of TIB Stock and the closing price per share of TIB Stock on the business day prior to the expiration of the Offering was \$19.51 per share, an immediate gain of \$4.51 per share for those shareholders of TIB Stock who exercised their Rights.

In response to the Participant's assertion that not enough information was provided to Participants concerning the terms of the Offering, the Applicant states that TIB provided Participants who held TIB Stock in their TIB Stock Fund with sufficient information and the opportunity to participate in the Offering. The Applicant states that all Plan Participants who held shares of TIB Stock in the TIB Stock Fund in the Plan were provided with the opportunity to participate in the Offering on the same terms as other shareholders of TIB Stock (except for the exercise process and the absence of fees and sales commissions for shares of TIB Stock held in the TIB Stock Fund), including any employees who held shares of Stock in accounts outside the Plan.

The Applicant notes that, in order to participate in the Offering with respect to shares of TIB Stock that were held in the Plan, Participants were mailed the "Instructions for Participants in the TIB Financial Corp. Employee Stock Ownership Plan with 401(k) Provisions - Important information on the TIB Financial Corp. Rights Offering," that provided Participants with instructions on how to exercise the Rights that were allocated to a Participant's Plan account. In addition, the Applicant states that Participants were provided with a special election form to exercise their Rights and a prospectus that was provided to all

shareholders of TIB Stock that described the Offering in more detail.

After giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, US Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the Federal Register on March 30, 2012 at 77 FR 19352.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693-8553. (This is not a toll-free number.)

Ed Laur Defined Benefit Plan (the Plan)

Located in Amarillo, TX

[Exemption Application No. **D-11714**

Prohibited Transaction Exemption **2012-18**]

#### EXEMPTION

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,<sup>7</sup> shall not apply to the cash sale by the Plan to Ed Laur (Mr. Laur) of shares of stock (the Stock) of EnergyNet.com (EnergyNet); provided that:

(a) The sale of the Stock by the Plan to Mr. Laur is a one-time transaction in which the Plan receives cash;

(b) As the result of the sale, the Plan receives the fair market value of the Stock, as determined by the CFO of EnergyNet, as of the most recent valuation of such Stock;

(c) The Plan pays no commissions or fees in regard to the transaction; and

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<sup>7</sup> Pursuant to 29 CFR 2510.3-3(b) of the Department's regulations, there is no jurisdiction with respect to the Plan under Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

(d) The terms of the sale are no less favorable to the Plan than those the Plan would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on June 1, 2012, at 77 FR 32697.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8551. (This is not a toll-free number.)

## GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Each exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of an exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

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